UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH

WEYERHAEUSER COMPANY

And

ASSOCIATION OF WESTERN PULP AND PAPER WORKERS, AFFILIATED WITH THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

ASSOCIATION OF WESTERN PULP AND PAPER WORKERS, AFFILIATED WITH THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 580 AND 633

Cases 19-CA-122853
19-CA-127089
19-CA-127090
19-CA-127561
19-CA-128688
19-CA-128740
19-CA-131148

TABLE OF CONTENTS

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH

WEYERHAEUSER COMPANY

And

Cases 19-CA-122853
19-CA-127089
19-CA-127090
19-CA-127561
19-CA-128688
19-CA-128740
19-CA-131148

ASSOCIATION OF WESTERN PULP AND PAPER WORKERS, AFFILIATED WITH THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

ASSOCIATION OF WESTERN PULP AND PAPER WORKERS, AFFILIATED WITH THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 580 AND 633

Susannah C.Merritt, Esq., for the General Counsel.

Richard N. VanCleave, Esq. (VanCleave & Cobrain), of Sherwood, Oregon, for the Respondent.

Paul Cloer, Organizing Coordinator, of Portland, Oregon, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOHN J. MCCARRICK, Administrative Law Judge. This case was tried in Portland, Oregon, from December 2 through 5, 2014, upon the order consolidating cases, consolidated complaint ,and notice of hearing issued on August 22, 2014, by the Regional Director for Region 19.

The complaint alleges that Weyerhaeuser Company, Respondent, violated Section 8(a)(1) of the Act by disciplining employee Steve Collins for engaging in what Respondent believed were protected-concerted activities, by limiting the ability of employees' union representatives from participating in a disciplinary interview, and by removing a union communication from the Union's bulletin board.

The complaint further alleges that Respondent violated section 8(a)(5) and (1) of the Act by making unilateral changes to its practice of how it performs training evaluations, by unilaterally implementing new rules related to food safety, by unilaterally changing its practice of scheduling the training of operators in the Energy and Utility Department, and by refusing to furnish information or refusing to furnish information in a timely manner requested by the Union necessary and relevant to its duties as exclusive collective-bargaining representative.

FINDINGS OF FACT

Upon the entire record herein, including the briefs from counsel for the General Counsel and Respondent, I make the following findings of fact.

I. JURISDICTION

Respondent admitted and I find that is a State of Washington corporation located in Federal Way, Washington, and with a facility located in Longview, Washington, where it operates a paper and pulp mill. In the operation of the paper and pulp mill, during the last 12 months, Respondent has derived gross revenues in excess of $500,000 and has purchased goods and services valued in excess of $50,000 directly from points outside the State of Washington. Respondent further admitted and I find that it is an employer engaged in interstate commerce within the meaning of Sections 2(2), (6), and (7) of the Act and a healthcare institution within the meaning of Section 2(14) of the Act.

II. LABOR ORGANIZATION

Respondent admitted and I find that Association of Western Pulp and Paper Workers, affiliated with the United Brotherhood of Carpenters and Joiners of America (AWPPA) and its Locals 580 and 633 (Unions) are labor organizations within the meaning of Section 2(5) of the Act. The Union's representatives relevant in this case include

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. BACKGROUND FACTS

Respondent and the Unions have a long history of collective bargaining at Respondent's Longview, Washington paper and pulp mill. The Unions represent Respondent's employees in three discreet bargaining units.

Local 633 represents a unit of Respondent's 75 extruders (extruder unit) including:

> All employees of Respondent at its Longview, Washington extruder operation, except those employees engaged in administration, actual supervision, watchman duties, sales, engineering and drafting, research and technical occupations requiring professional training, accounting, office clerical and guards, supervisors, and professional employees as defined in the Act.

The extruder department laminates polyethylene onto paperboard which is then shipped to the Company's customers who convert the product into individual drink containers. The parties have been signatory to a series of collective-bargaining agreements, for this bargaining unit, the most recent being effective from April 5, 2013— 2019.

Local 633 also represents a unit of Respondent's 125 paperboard employees (paperboard unit) including:

> All employees of Respondent working in its paperboard, shipping, L 3 paper machine, and L 3 technical departments at its Longview facility, except those engaged in administration, actual supervision, watchman duties, sales, engineering and drafting, research and technical occupations requiring professional training, accounting, clerical, stenographic and other clerical work. Also excluded are guards, supervisors, and professional employees as defined in the Act.

The paperboard unit includes the paper machine (identified as L3) which produces paperboard stock, and includes the paperboard shipping department and the technical department. The parties have been signatory to a series of collective-bargaining agreements, the most recent being effective March 15, 2007, through March 14, 2014. This agreement was extended by the parties through June 1, 2014.

Local 580 represents a unit of Respondent's 250 energy and utility, maintenance, fiberline, and chip processing employees (Local 580 unit) including:

> All employees of Respondent at its Longview facility, except those employees in Respondents extruder, paperboard, shipping, L 3 paper machine, L 3 technical departments, and those employees engaged in administration, actual supervision, watchman duties, sales, engineering and drafting, research and technical occupations requiring professional training, accounting, stenographic and other clerical work. Also excluded are guards, supervisors, and professional employees as defined in the Act.

The Local 580 unit includes the Chips, Fiberline, Energy and Utilities (E & U), and maintenance departments. The parties have been signatory to a series of collective-bargaining agreements, the most recent being effective March 15, 2007, through March 14, 2014. This agreement was extended by the parties through June 1, 2014.

Employees in the Local 580 unit and the paperboard units ratified their respective successor collective-bargaining agreements in August 2014. At the time of the hearing the new collective-bargaining agreements for these units had not been printed, but any changes from the parties' previous collective-bargaining agreements have been ratified by the units and are contained in Respondent's best and final proposal.[1]

Respondent's liquid packaging board product is subject to regulation by the United States Food and Drug Administration (FDA). Respondent is audited annually by the FDA and is required to provide documentation to its customers that the products comply with the FDA

[1] GC Exh. 5.

standards. Respondent admitted and I find that its management team of human resource manager, Diane Zolotko (Zolotko), extruder department manager, Matt Warthen (Warthen), assistant to the human resources director, Terri Hurley (Hurley), team development manager (TDM), Art Calhoun (Calhoun), energy and utilities manager, Assaad Alsemaan (Alsemann), shift supervisor, Miles Ambergey (Ambergey), paper machines superintendant, Tim Edwards (Edwards), central services superintendant, David Kay (Kay), and Supervisor John Stroburg (Stroberg) are supervisors and agents within the meaning of the Act.

Since the alleged violations do not occur in any pattern or chronological order, I will discuss them in the order in which they appear in the complaint.

B. THE 8(A)(1) ALLEGATIONS

The discipline of Steve Collins

Complaint paragraph 8 alleges that Respondent violated section 8(a)(1) of the Act in issuing its employee Steve Collins a 3 day suspension because it believed he engaged in protected concerted activity.

a. The facts

Steve Collins has been employed by Respondent as an operator and has worked in its extruder department for the past 37 years. In his testimony Collins explained that Respondent's extruder department was sold to Tetra Pak in 1993. Tetra Pak owned and operated the extruder department for about 17 years, then sold it back to Respondent in 2010. Collins' supervisors are TDMs Calhoun, Amburgey, Richard Hart (Hart), and Steve Queckboerner (Queckboerner). The TDMs are supervised by extruder department General Manager Warthen. Collins was a shop steward for the extruder unit for about 2 years, about 8 years ago.

On January 27, 2014, Collins unrebutted and credited testimony is that he wrote a sign on a piece of milk carton paper with a felt pen that stated, "Please Buy Us Back!!! Tetra Pak."[2] The sign was about 18 by 20 inches. No one else was present when Collins made the sign. After writing the sign, Collins leaned it on the front of his console in the operator's shack, so that it was visible to anyone walking by.[3] Collins said he made the sign as a joke because he had heard that Tetra Pak officials were coming through his department and he wished he could have stayed with Tetra Pak, because he was dissatisfied with Weyerhaeuser management. According to Collins he did not expect that anyone from Tetra Pak would actually see his sign.

On January 27, 2014, at about 4:30 supervisory TDM Calhoun went to Collins in the break shack and asked him if he made the above sign. Collins said, "On the grounds that it might incriminate me, I can't answer that question." Calhoun replied, "Does that mean 'no'?" Collins responded, "No, on the grounds that it could incriminate me, that means I can't answer." Calhoun again asked Collins if he meant that he did not make the sign, to which Collins

[2] GC Exh. 46.
[3] ALJ Exh. 1.

responded, "No, Art, that means yes, I did do it."[4] Five minutes later, Calhoun came back and told Collins to get a shop steward for a meeting to be held in General Manager Warthen's office.

A fact finding meeting was conducted at the end of Collins' shift on January 27 and another on February 13, 2014, that are discussed below.

After conducting the fact finding interviews, on March 24, 2014, General Manager Warthen called Collins into his office and issued him a 3-day suspension for dishonesty and insubordination due to not answering the questions from the fact finding honestly. The suspension letter[5] states in pertinent part:

> . . . .
>
> Upon first glance at the poster, the company noticed that there were different hand writings represented. The words "Buy us Back!" were in a female's handwriting. "Tetra Pak" and the middle exclamation mark were in a man's handwriting and the final exclamation mark was written in what appeared to be a man's handwriting.
>
> February 13th a second fact finding meeting was conducted with you and your Union Representative, Jeff McGlone, to provide you a second opportunity to be truthful regarding the three people who participated in writing the poster. During this meeting, you shared that you had written the final exclamation mark, but someone else had filled it in with the heavy felt pen markings. So at this meeting you identified that there were, in fact, at least two employees who participated in writing the sign.
>
> When asked did you write the word "Tetra" on this poster? You responded "Yes." When asked if you wrote the word "Pak" on this sign, you responded "Um huh." When asked if you wrote the exclamation mark in the middle on the poster, you replied "Um huh." When asked if you wrote the exclamation mark to the far right on the poster, you answered "Yes." The Company has determined these answers to be truthful based on your handwriting.
>
> When asked, did you write the word, "Please" on the poster, you responded, "Yes". When asked, did you write the word "Buy" on the poster, you responded, "Yes". When asked, did you write "Us" on the poster, you responded, "Yes." When asked, did you write the word "Back" on this poster, you responded "Um huh." When asked did you write the exclamation mark on the left of the poster, you responded "Yes". When asked, did you write the phrase "Please Buy Us Back!" you softly responded, "Yes". The Company had determined these answers to be untruthful based on your handwriting and the handwriting of a female who matches the handwriting on the poster.
>
> Upon review of the facts, it is determined that you have violated the collective bargaining agreement specifically Section 16: Causes for
> Discipline or Discharge; subsection 7 dishonesty. Further, you were insubordinate due to not answering the questions honestly as you were instructed to do.

[4] Tr. p. 251, line 25 to p. 252, line 19.
[5] GC Exh. 47.

> It appears you are willing to "take one for the team." Unfortunately, your teammates were unwilling to come forward to take ownership in their part of the sign. Since you are all in stated or non-stated agreement, that you should take full blame, you are hereby issued a 3-day suspension, on a non-precedent setting basis, as a reminder for you to understand that we are in business because of our valued customers. . . . Additionally, being dishonest and insubordinate during fact findings will not be tolerated.

Warthen told Collins he would be suspended for 3 days without pay and had supervisory TDM Queckboerner escort him to his car.

b. The analysis

Counsel for the General Counsel contends that Respondent violated Section 8(a)(1) of the Act when it suspended Collins in retaliation for what it believed was his protected concerted activity of writing and displaying the Tetra Pak sign.

Respondent argues that there is not a scintilla of evidence to support the allegation that Respondent believed Collins engaged in protected concerted activity. Respondent further contends that the sign was not protected activity and the complaint was directed at a third party and disparaged Respondent, citing *NLRB v. IBEW Local 1229 (Jefferson Standard Broadcasting)*, 346 U.S. 464 (1953), and *Elko General Hospital,* 347 NLRB 1425 (2006).

Usually employee activity is concerted when it is "engaged in with or on the authority of other employees," and a respondent violates Section 8(a)(1) of the Act if, having knowledge of an employee's concerted activity, it takes adverse employment action that is "motivated by the employee's protected concerted activity." *Meyers Industries (Meyers I)*, 268 NLRB 493, 497 (1984). However, even in the absence of concert by employees, an employer's mistaken belief that an employee engaged in protected concerted activity is controlling. *CGLM, Inc.*, 350 NLRB 974, 979–980 (2007), citing *Henning & Cheadle*, 212 NLRB 776, 777 (1974).

To be protected under Section 7 of the Act, employee activity must be pursued for union related purposes or for other mutual aid or protection. The Board has long held that employee activity may be protected where there is an appeal about working conditions to outside agencies, including where an employee sent a letter to his employer's client critical of the employer. *M.V.M., Inc*., 352 NLRB 1165, 1172 (2008). Activities including sending emails to fellow employees about working conditions have been found to be protected. *Timekeeping Systems*, *Inc.*, 323 NLRB 244 (1997).

In analyzing alleged discriminatory conduct for engaging in protected concerted activity the test is the same as for violations of Section 8(a)(3) of the Act. In mixed motive cases, under *Wright Line*, 251 NLRB 1083 (1980), enfd*.,* 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the General Counsel has the burden of proving by a preponderance of the evidence that animus against protected conduct was a motivating factor in the adverse employment action. If the General Counsel makes a showing of discriminatory motivation by proving protected activity, the employer's knowledge of that activity, and animus against protected activity, then the burden of persuasion shifts to the employer to prove that it would have taken the same action even in the absence of the protected activity.

The Board has inferred unlawful motive where the employer's action is "baseless, unreasonable, or so contrived as to raise a presumption of unlawful motive." *Montgomery Ward*, 316 NLRB 1248, 1253; *ADS Electric Co*., 339 NLRB 1020, 1023 (2003); *Shattuck Denn Mining Corp. v. NLRB,* 362 F.2d 466, 470 (9th Cir. 1966); and *J.S. Troup Electric,* 344 NLRB 1009, 1015 (2005).

Where the employer's defense is found to be pretextual, the employer fails to establish that it would have disciplined the employee for a lawful, nondiscriminatory reason. *Aero Metal Forms*, 310 NLRB 397, 399 fn.14 (1993). A pretextual reason supports an inference of an unlawful one. *Keller Mfg Co.*, 237 NLRB 712, 717 (1978). Moreover, in the case of pretext there is no mixed motive and the *Wright Line* test does not apply.

In the instant case, I find that Collins engaged in what Respondent believed was concerted activity. Contrary to Respondent's assertion that there is no evidence that Respondent believed Collins engaged in protected concerted activity, the language of Respondent's suspension letter reflects that it believed that Collins had engaged in concerted activity when he made the Tetra Pak sign. As the suspension letter recites: "It appears you are willing to 'take one for the team.' Unfortunately, your teammates were unwilling to come forward to take ownership in their part of the sign. Since you are all in stated or non-stated agreement, that you should take full blame, you are hereby issued a 3-day suspension." From the language of this letter, it is clear that Zolotko believed that the sign was created by Collins and his fellow employees. Further, as demonstrated below in the *Weingarten* interviews, Zolotko took the position that Collins alone did not write the sign but that others, including a female were involved.

Moreover, I find Collins' activity in preparing and displaying the Tetra Pak sign was protected. Here, Collins sign was essentially a protest of working conditions at Respondent's facility as it urged Tetra Pak to resume its operation of the extrusion operation. While Collins said he wrote the sign as a joke because he did not think Tetra Pak officials would see the sign, he displayed the sign because he was dissatisfied with Respondent's management. *Timekeeping Systems*, *Inc.*, 323 NLRB 244 (1997); *M.V.M., Inc*., 352 NLRB 1165, 1172 (2008). Thus I find Collins was engaged in protected-concerted activity that was known to Respondent.

Respondent's reliance on *Elko General,* supra*,* is not warranted here. In *Elko General* at 1427 the Board found the respondent had met its burden of showing it would have fired the employee for disloyalty and insubordination despite the employee's protected activity.

However here, the first time disloyalty is raised is in Respondent's brief. Apparently at the time of the suspension Respondent had not considered disloyalty a reason for suspending Collins as the suspension letter mentions only dishonesty and insubordination for not answering truthfully as grounds for the suspension. Moreover, there is nothing disparaging of Respondent's product or business mentioned in the sign. Thus, it never lost the protection of the Act. *M.V.M., Inc.,* supra at 1172. I find Respondent's contrived argument that Collins engaged in an act of disloyalty is pretext.

In its defense, Respondent contends that Collins was not disciplined for writing the sign, but rather, that he was suspended for being dishonest during the investigative meeting as well as being insubordinate by not answering the questions honestly.

Initially, Respondent's *Wright Line* defense fails as it has presented no evidence that Collins lied about drafting the sign. The record reflects that Collins consistently told Respondent that he alone wrote the entire sign. Moreover, as discussed below, employee Becker denied she had any part in making any part of the sign. In the suspension letter Zolotko asserts that Collins was lying based on handwriting analysis of the sign. No evidence of any expert handwriting analysis was proffered for the record. Thus, the reasons asserted for Collins' suspension are baseless.

Moreover, as noted above, I find Respondent's reasons for suspending Colins are pretextual. This pretext supplies the unlawful motivation for Respondent's suspension of Collins. Respondent's pretext also eliminates the need for the mixed motivation analysis of *Wright Line*, as it has presented no valid defense. I find that Respondent violated Section 8(a)(1) of the Act in suspending Collins.

The *Weingarten* allegations

a. The facts

i. The February 13, 2014 fact finding meeting with employee Collins

Complaint paragraph 9 alleges that on about February 13, 2014, Respondent put restrictions on employee Collins' union representative's ability to speak and to remain present during an investigative interview.

As noted above, at the end of his shift on January 27, 2014, Collins and shop steward Rich Murray (Murray) went to General Manager Warthen's office for a fact finding meeting. Warthen, TDM Calhoun, Collins, and Shop Steward Murray attended the meeting. Warthen told Collins that this was a fact finding meeting regarding the Tetra Pak sign. Warthen asked Collins if he wrote the sign and Collins admitted that he had. Warthen then asked Collins if he knew that the sign could hurt Weyerhaeuser's reputation, and Collins answered that he had only intended for the sign to be a joke. Warthen then asked Collins if it was right for him to make a sign that soiled Weyerhaeuser's reputation with the customer and he said, "No." Warthen asked if Collins was happy with his employment with Weyerhaeuser and Collins responded that he was not satisfied with the way that Weyerhaeuser treated its employees. Warthen also asked Collins if he knew that there were 50 openings with Tetra Pak on Tetra Pak's website and Collins responded that he did not know that Tetra Pak had a website.

ii. Collins' February 13, 2014 fact finding meeting

On February 13, 2014, a second fact finding meeting was held with Collins. The meeting took place in the operator shack in the extruder department. Present were Collins, Shop Steward Jeff McGlone (McGlone), Respondent's human resource manager Zolotko, Amburgey, Warthen, and human resources assistant Hurley. It is unrebutted and I credit both Collins and McGlone that the following discussion took place during this fact finding meeting. At the outset of the meeting Zolotko stated that this was a fact finding meeting involving the Tetra Pak sign and that the results could lead to discipline, up to and including termination. Union Steward McGlone asked Zolotko what section of the contract was violated and Zolotko said that it was section A(8)

regarding dishonesty. Then Collins asked Zolotko if she was accusing him of being dishonest. When Zolotko did not answer Collins' question, McGlone asked Zolotko if she was accusing Collins of lying. Zolotko told McGlone to sit down and be quiet, that this was her meeting and she would be asking the questions. Then Zolotko showed the Tetra Pak sign to Collins. Zolotko then asked Collins about each word written on the sign. Each time Zolotko pointed at a word on the sign and asked Collins if he had written it, he admitted he had. Then Zolotko claimed she had a handwriting expert analyze the sign and the handwriting on the sign was done by two different people, one of whom was a woman.[6] When McGlone asked her how she knew that some of the handwriting on the sign was done by a woman, Zolotko once again replied that this was her meeting and that she would be asking the questions. McGlone stopped asking questions during the meeting. Near the end of the meeting, Collins told Zolotko, "I wrote this. The whole thing. All three exclamation marks."[7] Then, after looking more carefully at the sign, Collins told Zolotko that it looked like the third exclamation mark had been changed.

iii. The February 17, 2014 fact finding meeting with employee Joyce Becker

Complaint paragraph 10 alleges that on about February 17, 2014, Respondent put restrictions on employee Becker's union representative's ability to speak and to remain present during an investigative interview.

Respondent has employed Joyce Becker as a reel operator in the extruder department for 25 years. On February 17, 2014, during the investigation regarding the Tetra Pak sign, Becker was also called into a fact finding meeting. Shop Steward Luke Johnson (Johnson) represented Becker at this meeting. Zolotko ran the meeting with Warthen, Calhoun, and Hurley also present.

According to the testimony of Becker and Johnson, whose testimony was largely unrebutted and credible, the following occurred at this meeting. At the outset of the meeting Zolotko told Becker that this fact finding could lead to discipline up to termination for being dishonest. Zolotko asked Becker if she had been at the facility on January 27, 2014. Becker said she had not been at the facility that day but Warthen reminded Becker that she had been at a quality meeting at the facility that day. Becker admitted that she had forgotten that she had attended the quality meeting at the facility. Zolotko asked Becker when she had arrived and when she had left the facility. Then, Steward Johnson told Zolotko that Respondent already had that information since that information is recorded at Respondent's front gate. Becker told Zolotko that she had come in the side gate at 6:45 in the morning and had left immediately after the meeting was over at about 10:30 to 10:45 a.m. Zolotko then asked Becker if she had heard about the Tetra Pak sign. Becker replied that she had heard about the sign, but that she had not seen it. Zolotko showed Becker the sign and asked her if she had written it. Becker said she had not written the sign. Zolotko asked Becker if she thought the third exclamation point on the sign looked like a phallic symbol. Steward Johnson said he understood that another employee had already admitted to writing the sign and he asked Zolotko for a copy of the minutes from the Collins' fact finding meeting. Zolotko told Johnson that he could ask for the information once

[6] As it turns out the handwriting expert was Zolotko herself. I find no basis in the record for establishing Zolotko to be a handwriting expert.

[7] Tr. p. 264, lines 7–10.

the meeting was over, but she was not there to discuss Collins. Johnson replied that he had the right to ask for these minutes. Zolotko told Johnson that she was going to ask the questions, that Johnson was to be quiet and if he kept asking questions she would stop the meeting, ask him to leave and get a new shop steward. TDM Calhoun admitted that Zolotko told Johnson that he needed to be quiet during the meeting. Calhoun further admitted that Johnson told Zolotko that she was not letting him act as Becker's representative.

After a caucus between Johnson and Becker, Zolotko asked Becker if she had written any part of the sign. After Becker again told Zolotko that she had not written any part of the sign, Zolotko asked Becker if she would ever do anything that would hurt Respondent's relationship with its customers. When Becker did not understand the question, she asked Zolotko to repeat her question. After an exchange between Zolotko and Becker, that was not producing any results, Johnson attempted to explain Zolotko's question to Becker. Then Zolotko once again told Johnson that she would be asking the questions. Zolotko then turned to Johnson and said, "Thanks a lot Luke,"[8] and then asked him to step into the hall with her. In the hall Zolotko reminded Johnson of the seriousness of the meeting and accused Johnson of telling Becker to be combative. Johnson denied this accusation. When Zolotko and Johnson came back into the room, Zolotko asked Becker again if she would ever do something to make Respondent look bad. Becker responded that she would not and that she always put out a quality product. Zolotko asked her again if she had written any part of the sign and Becker denied she had. Zolotko then said one person had written, "Please Buy Us Back!!!" and another had written "Tetra Pak." Becker said that she did not write the sign and she told Warthen that if she had written the sign, she would have admitted it. .

Johnson said again that someone already admitted to writing the sign. Zolotko told Johnson that that she would be asking the questions, this was her investigation, and that Johnson needed to be quiet.

While Respondent alleged Johnson was loud and disruptive during the meeting, according to Becker and Johnson, Johnson did not raise his voice or interrupt Zolotko during the meeting. This is consistent with the testimony of Respondent's TDM Calhoun who admitted that during the meeting Johnson never screamed and to the extent that Johnson did raise his voice, he was doing so in order to get his point across to represent Becker. Calhoun also admitted that the only time when Johnson could be said to be interrupting Zolotko was when Johnson asked why Becker was being questioned when another employee had already admitted to writing the sign. In this regard, to the extent Hurley and Zolotko's testimony is inconsistent with that of Becker Johnson and Calhoun, I will credit Becker, Johnson and Calhoun. After the meeting, Johnson followed up with Zolotko and requested that Zolotko provide him with the notes from Becker and Collins' fact findings, but she did not provide them to Johnson.

[8] Tr. p. 331. Line 1.

b. The analysis

General Counsel argues that under *NLRB v. J. Weingarten*, 420 U.S. 251, 262–263 (1975), the role of the union representative is to provide assistance and counsel to an employee who is being interrogated. An employer may not, therefore, silence a union representative.

Respondent contends that in the Collins and Becker fact finding meetings, Zolotko did not try to silence the union representatives but was merely asserting her right to conduct an investigation without interference from union officials, citing *Manville Forest Products,* 269 NLRB 390 (1984); *Cook Paint & Varnish, Co*., 246 NLRB 646 (1979); and *New Jersey Bell Telephone Co.,* 308 NLRB 277 (1992).

Under *NLRB v. J. Weingarten*, 420 U.S. 251 (1975), the Board has held an employee has a right to union representation in an investigative interview when the employee reasonably believes the interview may result in discipline.

The right to a representative includes the right to an effective representative who is present to give assistance and counsel. An employer may not, therefore, silence a union representative. *Southwestern Bell Telephone Co.*, 251 NLRB 612, 613 (1980). Accordingly, an employer may not tell a union representative to remain silent during an interview. *USPS*, 355 NLRB 368, 397 (2010).

Contrary to Respondent's assertion, Zolotko went well beyond merely informing the union representatives that she was asserting her right to conduct the interviews. During the February 13, 2014 interview with Collins, Zolotko told union representative McGlone to sit down and be quiet. During the February 17, 2014 interview with Becker, Zolotko told Union Representative Johnson that she was going to ask the questions, that Johnson was to be quiet and if he kept asking questions she would stop the meeting, ask him to leave and get a new shop steward. Later during this interview Zolotko again told Johnson that that she would be asking the questions, this was her investigation, and that Johnson needed to be quiet.

Moreover, contrary to Respondent's assertion, there is no evidence that either McGlone or Johnson were disruptive during the interviews. *New Jersey Bell Telephone Co.,* 308 NLRB 277 (1992), cited by Respondent is inapposite. In *New Jersey Bell*, the union representative objected to all repetitive questions asked by the employer. The Board found this disruptive of the investigatory process. Here there is no evidence that McGlone or Johnson engaged in any such disruptive conduct. While they both asked questions and tried to provide assistance and counsel, there was no disruption of the interview, verbal abuse, insulting interruptions, or demeaning conduct. *Yellow Freight Systems,* 317 NLRB 115, 124 (1995).

By her orders to McGlone and Johnson to be silent, Zolotko effectively prevented them from giving effective assistance and counsel to Collins and Becker, thereby denying Collins and Becker their right to have a union representative present in violation of Section 8(a)(1) of the Act.

Complaint paragraph 11 alleges that on about June 5, 2014 Respondent removed a union communication form a union bulletin board.

a. The facts

In June 2014, former Local 580 Officer Rex Osborne (Osborne), placed a cartoon[9] on a Local 580 union bulletin board in Respondents' E & I maintenance shop in the E & U department. The cartoon had a definition of bad faith bargaining and showed parties sitting down at the bargaining table with Respondent representatives shown wearing ear plugs while telling the union representatives: "We're listening." After Osborne posted the cartoon, TDM John Strouburg (Strouburg) told Osborne that he was going to have to take the cartoon down. Osborne asked Strouburg who told him to take the cartoon down and Strouburg replied that no one had. Osborne told Strouburg he could not take it down because it was a union posting. Then Strouburg admitted that he had been told to take all derogatory cartoons down.

The parties' collective-bargaining agreements provide that Respondent will "supply adequate enclosed locked bulletin boards for the use of the Local Union in posting of official bulletin boards."[10] There are union designated bulletin boards throughout Respondent's facility that contain Union and other nonunion related postings. For example, for the past 3 years, pamphlets on charter fishing trips have been posted on the union designated bulletin boards and these have not been removed by management.

b. The analysis

General Counsel contends that an employer may not remove notices from a union bulletin board.

Respondent contends there is no violation since the cartoon remained posted for 2 months and Osborn was not an officer of the Union at the time of the posting and there was no evidence that he was authorized to post a union communication.

In *Marriott Management Services, Inc.*, 318 NLRB 144, 153 (1995), the Board affirmed the administrative law judge who found:

> It is well established that there is no statutory right of employees or a union to use an employer's bulletin board. However, it is also well established that when an employer permits, by formal rule or otherwise, employees and a union to post personal and official union notices on its bulletin boards, the employees' and union's right to use the bulletin board receives the protection of the Act to the extent that the employer may not remove notices or discriminate against an employee who posts notices, which meet the employer's rule or standard but which the employer finds distasteful. Citing, *Container Corp. of America*, 244 NLRB 318 (1979).

[9] GC Exh. 54.
[10] GC Exhs. 3 and 4 at p.22.

Here, it is uncontested that Supervisor Strouburg removed Osborne's cartoon from one of union designated bulletin boards, even though other personal items had also been posted on those bulletin boards without being removed. As noted in *Marriott,* supra, it is immaterial whether it was the union or an employee who posted the notice. Once the employer has given permission to use a bulletin board it may not remove union related items it finds distasteful. As the cartoon constituted a statement about the conditions of collective bargaining with Respondent, it was protected under section 7 and Respondent violated Section 8(a)(1) when it discriminatorily removed this pro union commentary from the bulletin board.

C. THE 8(A)(5) ALLEGATIONS

1. The October 2013 change in training evaluations

Complaint paragraph 12(a) alleges that in October 2013 Respondent changed its practice with regard to how it performs training evaluations in its E & U department without the agreement of the Union.

a. The facts

The record reflects that the parties have bargained for and memorialized contract language that method and means of evaluation of employee skills shall be jointly agreed upon. The March 15, 2007, through March 14, 2014, collective-bargaining agreement in the Local 580 unit provides in pertinent part under 580 Local Ground Rule No. 48 the subheading 8. Pay for skills[11]:

. . . .

> Some component of pay will be based on skill, with increasing pay as additional skills and capabilities are acquired and used.
>
> Processes will be developed to assure that acquired skills are maintained and continuously improved upon. For greater clarity, management shall have the right to implement certification requirements where required by law or when recommended by industry standards (e.g. Black Liquor Recovery Boiler Advisory Committee, Factory Manual). **The Company and the Union will jointly develop the means of evaluation.**
>
> Each pay level will include elements of leadership, administration, operation, coordination, project management and maintenance.
>
> The new work design will define the advancement process. **The minimum qualification levels and performance standards will be determined by mutual agreement between the Company and the Union.**
>
> Employees hired into the mill after March 15, 2008 must demonstrate the capability and aptitude to eventually perform all jobs within the work system before being allowed to work in any such system. **The Company and the Union shall jointly develop the instrument(s) to be used to measure capability and aptitude through the application**

[11] GC Exh. 4, pp. 176–177.

of a structured external evaluation tool, such as Work Keys or another mutually agreed to tool. (emphasis added)

This provision of the Local 580 collective-bargaining agreement has been retained in the parties' successor agreement.

Dan Sauer (Sauer), who has conducted all of Respondent's classroom training for employees in the E & U department since 2010, testified without contradiction, and I credit his testimony, that the parties' 1999 E & U final design agreement,[12] referred to in the Local 580 collective-bargaining agreement as the "new work design,"[13] reflects that Local 580 and Respondent have joint decision making authority with regard to the "level of skills needed," the "gap between current and needed skills," and scheduling training for E & U employees.

Under the E & U final design agreement the areas listed as "Assess mastery; verify learnings" are to be decided by the system leader and system leader has the sole authority to "Approve/Veto" such determinations.[14]

Sauer testified without contradiction that Respondent's E & U department is broken down into two discreet sections, the power house and effluent department. Power house employees are either in recovery or power jobs. The E & U department is part of the Local 580 bargaining unit. Local 580 and Respondent have agreed on the skills that employees at each level must have mastered in order to move up to the next qualification level. These skills are contained in the parties March 15, 2007, through March 14, 2014, collective-bargaining agreement as modified in the current agreement, reflected in Respondent's best and final offer.[15] The job positions and pay rates in the recovery and power side range from D (lowest) to A (highest).[16] Each time an employee goes from one level to the next, they receive a raise of $1 to $4.

Sauer said that before October 2013, in order for an employee to move from the entry position to the next higher level in the E & U department, the employee had to go through both formal classroom and on-the-job-training of 2 to 12 weeks from an experienced employee (OJT). The employee is given an OJT check list[17] that sets forth all the job functions that the trainee is responsible for learning. The employee checks off each item in the list as it is completed.

According to Sauer, before October 2013 after several weeks of classroom training and OJT, the employee would meet with their supervisor, to discuss the employees' qualifications to perform the job for which they were training. Sauer stated that before October 2013, the typical meetings between supervisor and employee lasted about 15 to 30 minutes where the supervisor asked the employee questions or posed hypothetical problems for the employee to solve. If the supervisor found the employee qualified, the employee was promoted into the next higher job

[12] GC Exh. 37, p. 26.
[13] GC Exh. 4,p. 177
[14] GC Exh. 37, pp. 24-26.
[15] GC Exhs. 5, and 37 pp. 12–14.
[16] GC Exh. 37, p. 2.
[17] GC Exhs. 27–34.

position and got a raise. There is no dispute that Respondent's evaluation system had operated in this way for at least the past 20 years.

Sauer stated that in about August of 2013, Respondent hired Alsemaan as its E & U manager. According to Sauer's un-contradicted testimony, in the fall of 2013, Alsemaan changed the way E & U employees were evaluated and promoted. The meetings to evaluate employees' skills went from 15–30 minute sessions to four 14 hour sessions.[18] The meetings now included not only the employee and immediate supervisor but also Alsemaan and Sauer. Rather than the immediate supervisor, the meetings were now run by Alsemaan. These new evaluation meetings were broken into 2 hour increments and could last for up to seven sessions. According to Sauer, because these meetings involved multiple meetings they became difficult to schedule and resulted in the evaluation process taking months longer to complete than it had before the Fall of 2013. Sauer said that Alsemaan began testing employees on subject matter that had not been previously covered, including safety and environmental issues.

On April 2, 2014, Local 580 President Michael Silvery (Silvery) wrote a letter to human resources manager Zolotko requesting that Respondent meet and bargain about the changes in the E & U department employees' evaluation process and requesting documentation regarding the changes.[19] On April 8, 2014, Zolotko responded by email stating only that the bargaining issue should be addressed by the parties' grievance procedure.[20]

b. The analysis

It is General Counsel's position that Respondent violated Section 8(a)(5) of the Act when it failed to notify or bargain with Local 580 of its intention to change the method by which it was going to be conducting the training evaluations or the effect that these changes would have on its bargaining unit.

Respondent contends that the Union clearly and unmistakably waived its right to bargain over any changes to the training evaluations of bargaining unit employees in the E & U department.

The Board and Courts have long held that Section 8(a)(5) of the Act requires an employer to provide its employees' representative with notice and an opportunity to bargain prior to making material, substantial, and significant changes with respect to terms and conditions of employment that are mandatory subjects of bargaining. *NLRB v. Katz*, 369 U.S. 736 (1962); *Toledo Blade Co.*, 343 NLRB 385, 387 (2004). Evaluations that have the potential to affect the wage rate an employee might receive, are a mandatory subject of bargaining. *Saginaw Control & Engineering*, 339 NLRB 541 (2003).

Wages, hours, and other terms and conditions of employment generally survive the expiration of a collective-bargaining agreement. *Hen House Market No. 3*, 175 NLRB 596

[18] GC Exhs. 35 and 36.
[19] GC Exh. 6.
[20] GC Exh. 8.

(1969). In addition, "an employer's regular and longstanding practices that are neither random nor intermittent become terms and conditions of employment even if these practices are not required by the collective bargaining agreement." *Prime Healthcare Services*, 357 NLRB No. 63, at page 8 (2011). The Board has held that an employer cannot change established past practices without notifying and offering to bargain with the union. Id.

The changes here to a mandatory subject of bargaining and long-established practice are significant as these evaluations are directly related to significant wage increases. Significantly, the parties' collective-bargaining agreement itself specifically states that Respondent and Local 580 will *jointly* develop the means of evaluation and that the minimum qualification levels and performance standards will be determined by *mutual* agreement between Respondent and Local 580.

It is uncontested that Respondent significantly changed the way that the E & U department performed its training evaluations beginning in October 2013. There is no dispute that before October 2013 and for the past 20 years, the training evaluations consisted of the operator's TDM asking a few general questions about the performance of the new position and that such questioning would last anywhere from 15 to 30 minutes. When the TDM had any concerns about the trainees' qualifications after their interview, the trainee would be sent back for 1 or 2 weeks of OJT to work on their skills and then the trainee would be to moved up to the next classification.

The change in manner of evaluating trainees resulted in delays in moving up to the next classification, because the coordination in the schedules of several different managers for a series of meetings took more time than setting up a single 15-minute evaluation. In addition, the content of the information that was tested changed from a focus on job duties to include Respondent's safety and environmental policies.

Respondent does not deny that it neither notified nor bargained with Local 580 prior to its implementation of this change. In its defense Respondent argues that the Union waived its right to bargain over any changes to the evaluation procedures in the E & U department through the terms of the collective-bargaining agreement.

A waiver of the duty to bargain may result from action or inaction, through contractual language specifically waiving the right of a party to bargain about a particular subject or in the failure of a party to protest unilateral action. *Ador Corp.*, 150 NLRB 1658 (1965); *U.S. Lingerie*, 170 NLRB 750 (1968). However, the Board and the courts have construed the waiver doctrine narrowly and have been reluctant to infer waiver in the absence of clear and unmistakable conduct. *Metropolitan Edison Co., v. NLRB,* 460 U.S. 693, 708 (1983). The clear and unmistakable test applies where the waiver is claimed in contract language. In this regard in *Amoco Chemical Co*., 328 NLRB 1220, 1121–1122 (1999) the Board held:

> Either the contract language relied on must be specific or the employer must show that the issue was fully discussed and consciously explored and that the union consciously yielded or clearly and unmistakably waived its interest in the matter.

Respondent refers to its collective-bargaining agreement with Local 580 to establish that there was a waiver by the Union of its right to bargain over the E & U department evaluation

process. In support of its waiver argument, Respondent cites local ground rule (LGR) No.48 which provides in part:

> 580 LOCAL GROUND RULE NO. 48
> Subject: Work Design Principles, Processes and Roles
>
> 1. All Work systems will have these main elements included in their designs:
> -work teams
> -job function rotation
> -pay for skills and knowledge
> -verification of skills and knowledge
> -training processes
> -operator-maintenance interface
> -team administrative roles
> -communication with and between teams[21]

Respondent also cites that the E & U Work design agreement[22] includes provisions for pay for skills and knowledge and verification of skills and knowledge; that it establishes required skill blocks that must be verified before moving on to the next skill block; and that it assigns the authority and responsibility to assess mastery and verify learnings to the system leader who is Department Manager Alsemaan.

Notwithstanding Respondent's citations to the negotiated agreements between it and Local 580, the language of those is agreements is clear that the parties agreed in their collective-bargaining agreement[23] that there would be joint decision making with respect to such items as:

> The Company and the Union will jointly develop the means of evaluation.
>
> The minimum qualification levels and performance standards will be determined by mutual agreement between the Company and the Union.
>
> The Company and the Union shall jointly develop the instrument(s) to be used to measure capability and aptitude through the application of a structured external evaluation tool, such as Work Keys or another mutually agreed to tool.

It is also clear from the work design agreement implemented pursuant to the terms of the above cited collective-bargaining agreement that the parties contemplated joint decision making authority with regard to the "level of skills needed," "select plan needed," the "gap between current and needed skills," and "schedule training" for E & U employees.

Although the work design agreement provides that the authority and responsibility to "assess mastery" and "verify learnings" resides with the system leader, this language cannot be viewed as a clear and unmistakable waiver by the Union of its right to bargain over changes to extant procedures of evaluation. This language only reflects who the parties have agreed will be

[21] GC Exh. 4, p. 173.
[22] GC Exh. 37.
[23] GC Exh. 4, pp.176–177.

the person to determine if trainees have acquired the skills necessary to advance. It is the language of the collective-bargaining agreement that is clear that the parties shall together develop, "The minimum qualification levels and performance standards . . ." and "shall jointly develop the instrument(s) to be used to measure capability and aptitude through the application of a structured external evaluation tool, such as Work Keys or another mutually agreed to tool." Id.

I find no evidence from the terms of the collective-bargaining agreements between the parties that Local 580 clearly and unmistakably waived its right to bargain over the means of evaluating the E &U department employees.

Respondent argues further that the Union essentially waived its right to bargain over the changes to the evaluation process because it took no action concerning the changes from October 2013 until April of 2014 and that while the parties were in negotiations from February 2014 to July 2014, the Union never made any proposals regarding the changed evaluation process.

The evidence reflects that Respondent implemented the changes to the E & U department evaluation process in about October 2013 without notice to or bargaining with the Union. The Board has long held that a union cannot be held to have waived bargaining over a change that is presented as a fait accompli. In this regard, in *Intersystems Design & Technology Corp*., 278 NLRB 759 (1986), the Board cited *Gulf States Mfg. v. NLRB,* 704 F.2d 1390, 1397 (5th Cir 1983):

> In *Gulf States*, the court dealt not only with the adequacy of the notice, but also with the related waiver issue (704 F.2d 1397): It is . . . well established that a union cannot be held to have waived bargaining over a change that is presented as a fait accompli. . . "An employer must at least inform the union of its proposed actions under circumstances which afford a reasonable opportunity for counter arguments or proposals." Notice of a fait accompli is simply not the sort of timely notice upon which the waiver defense is predicated. [Citations omitted.]

Respondent also argues that the language of the collective-bargaining agreement precludes a finding that the evaluation process prior to October 2013 was an existing term and condition of employment.

Respondent cites section 32 C of the collective-bargaining agreement[24] which provides:

> The failure of the Union to enforce any of the provisions of this Agreement or exercise any rights granted by law, or the failure of the Company to exercise any right reserved to it, or its exercise of any such right in a particular way, shall not be deemed a waiver of any such right or waiver of its authority to exercise any such right in some other way not in conflict with terms of this Agreement.

This section of the collective-bargaining agreement is similar in nature to a management rights clause which the Board has uniformly held will not constitute a waiver by the union of its

[24] GC Exh. 4, p. 52.

right to bargain over a mandatory subject of bargaining in the absence of evidence that the particular subject involved was knowingly discussed and waived by the union. *Dubuque Packing Co.,* 303 NLRB 386 (1991).

Respondent appears to argue that this language permits it to enforce rights it has under the collective-bargaining agreement despite a contrary practice. The problem with this argument is that, as noted above, the collective-bargaining agreement has never given Respondent the sole right to determine the "instrument(s) to be used to measure capability and aptitude. . ."

There is no evidence that the Union has waived its right to bargain over the evaluation process of unit employees in the E & U department.

I find that Respondent violated Section 8(a)(5) of the Act when it unilaterally changed the length, content, and format of E & U department bargaining unit employees' evaluations without first notifying and bargaining with the Union about these changes. *NLRB v. Katz*, 369 U.S. 736 (1962); *Saginaw Control & Engineering*, 339 NLRB 541 (2003).

2. The January 2014 changes in rules regarding food safety

Complaint paragraph 12(b) alleges that in January 2014 Respondent implemented new rules related to food safety without the agreement of the Union.

a. The facts

Respondent adopted its predecessor Tetra Pack's food safety hygiene rules in early 2010 after reacquiring the extruder facility. In February, 2014, Respondent implemented hygiene standards known as Food Safety System Certification (FSSC) 22000. The FSSC 22000 consisted of two parts: International Standards Organization (ISO) 22000 and Publicly Available Standard (PAS) 223. ISO 22000 is a food product quality management system. ISO 22000's predecessor was ISO 9001, a generic process quality management system. Respondent had operated under ISO 9001 since 1987. Tetra Pak had also operated under ISO 9001 and when Respondent reacquired the extruder department it adopted and incorporated Tetra Pak's ISO 9001 documentation.

In February 2014, Respondent implemented a new set of hygiene standards at its facility as set forth in "FSSC 22000 Food Safety Training—new hygiene standards" training material[25] introduced to employees through a series of food safety training sessions which took place in late January 2014. These new rules were implemented immediately following the training sessions in February 2014.[26] These rules applied to the Local 633 paperboard and extruder units.

The Unions first became aware that there could be changes in Respondent's food safety rules was in early February 2014 from their members.

[25] GC Exh. 23.
[26] GC Exh. 25, p. 2.

In June 2014 a summary of the rules[27] for the rewinder hygiene zone and the L3 paper machine hygiene in the paperboard unit was posted on the facility bulletin boards.

According to the unrebutted and credited testimony of Respondent's advanced lab technician in the paperboard department and Local 633 recording secretary, Lowell Lovgren (Lovgren), prior to February 2014 paperboard and extruder bargaining unit employees were permitted to drink coffee and beverages and chew tobacco on the production floor including the paper machine, the winder, the wrap line, the back tender control room, the winder control room and the wrap line control station and employees could eat lunch in the winder break shack and the back tender shack. After February 2014 only clear beverages were permitted on the production floor and the rewinder area was cordoned off as a hygiene area and no food or beverages were allowed in the shacks. Chewing tobacco was also prohibited throughout the production area.

Lovgren also testified without contradiction that a new hygiene zone was created in April 2014 around the rewinder area in the paperboard unit and demarcated by a blue line painted on the floor. In this hygiene zone employees could have no personal belongings, food, or beverages other than water.

While Respondent's January 2014 training materials[28] reflect there were extant hygiene rules in the Local 633 extruder bargaining unit, including no use of tobacco products, no gum or candy, no food or drink, according to Lovgren's unrebutted and credited testimony, prior to February employees could drink coffee and eat food in the extruder hygiene zone so long as it was in the shack which is part of the hygiene zone. After April 2014 employees could no longer drink coffee or eat food in the hygiene zone. Respondent's customer in technical service manager Scott Donaldson (Donaldson) admitted that new restrictions were added to the extruder department in February 2014, including the prohibition of personal items such as purses, lunchboxes, backpacks, coats, toothpicks in mouths, nail polish, false nails, false eyelashes, and loose clothing above the waist.[29]

Donaldson admitted that Respondent began strictly enforcing the water only restrictions for the five shacks located in the extruder department starting in February 2014. It is unrebutted that Respondent has also now restricted any food or beverage on the floor even during a shut down, contrary to its past practice.

Zolotko advised the Union that employees could be disciplined for non compliance with the new rules.[30]

b. The new cleaning requirements of the hygiene standards

As part of Respondent's new hygiene standards it required bargaining unit employees to ensure that specific areas of the facility were cleaned by filling out "Cleaning Inspection

[27] GC Exh. 26.
[28] GC Exh. 23, p. 8.
[29] Ibid. at p. 9.
[30] GC Exh. 25, p. 2.

Checklists."[31] To verify the cleaning had taken place. In January 2014, Respondent gave bargaining unit members these check lists[32] and told them to fill them out and hand to their supervisors daily. New checklists were created for the following areas: rewinder, winder, wet end, stock prep, roll line, dry end, starch deck, dry end backtender, roll line operations, starch deck operators, stock prep, machine tender—wet end, rewind storage area, loading dock/warehouse, loading dock 5, 3 rail line, 2 rail line, fine paper cleaning, west end shredder, extruder winder, #6 extruder, #6 extruder unwind, and #7 extruder unwind. Donaldson admitted that these checklists and employee responsibilities associated with the checklists were implemented for the first time in February 2014 and that, prior to February 2014, employees were not responsible for this kind of inspection or cleaning. Donaldson further admitted that Respondent's rule that employees inspect to ensure that there was no glass or brittle plastic in any of the hygiene zones was also part of the new food safety expectations and had not been previously required. He further admitted that the housekeeping standards in the Extruder department were increased and now required new inspections and checklists.

It is undisputed that in February 2014, Respondent implemented new job duties in requiring employees to fill out checklists ensuring that certain areas of the facility were clean. In addition, if those areas were not clean, the employee would be responsible for cleaning those areas. It is also unrebutted that, as of February 2014, Respondent required employees, such as employees who work in the rewinder area, to spend the last hour of their 4-day shift thoroughly cleaning each of the areas listed on the checklist, a job duty that was not previously required.

Respondent's paperboard unit employee Gabe Lovingfoss (Lovingfoss) testified about the new cleaning requirements and new forms[33] certifying the Langston Rewinder is clean. The back side of the form sets forth a list of 13 different glass and plastic fixtures (such as windows, gauges, and mirrors) that the employee is responsible for checking to make sure they are intact and not broken. The new checklist on its front side sets forth the following requirements:

> **Employee Responsible for Cleaning**: Langston Operator
>
> **Frequency**: Every shift and after maintenance down
> Clean Winder frame until free of loose dust and debris. Use compressed air.
> Clean floor under Winder until free of dust and debris. Use compressed air.
> Clean Control room until free of dust and debris. Use compressed air, Wipe down with a Wypall towel use cleaners
> Clean Unwind Stand until free of dust and debris. Use compressed air, wipe down with Wypall towel and use cleaners.
> Clean all Paper rolls and Winder drums until free of dust, debris and tape. Wipe down with a Wypall towel and use cleaners.
> Clean all dust and floor debris around Langston area. With Factory Cat Sweeper, broom and dust pan
> Bug light OF-25A is working, southwest of Langston
> No food or food waste in the Control room or Hygiene Zone
> Operator to use clean gloves when processing product

[31] GC Exh. 24, points 8–10 and Exh.25, points 8–10.
[32] GC Exhs. 56–103.
[33] GC Exh. 56.

No food waste in process waste
Complete the Glass & Brittle Plastics checklist on the backside
If down for maintenance, wipe down Langston frame with simple green.

Lovingfoss credibly testified without contradiction that Managers Greg Jasmer and Mike Haas provided Lovingfoss and his coworkers with the above checklist after the January 2014 training sessions and explained that now the operators were responsible for cleaning the machines, checking off each item on the checklists and providing the completed list to their TDM each day after they had done so. In addition to filling out these checklists on a daily basis, Respondent directed employees to spend the last hour of each 4-day shift performing a thorough cleaning in each of the areas on the checklists. These requirements were new.

Respondent asserts Lovingfoss testified that the only new task required as a result of the FSSC 22000 rules is that the day shift operator of the Langston Rewinder is required to thoroughly clean the machine at the end of their four day week. Contrary to Respondent's assertion, Lovingfoss testified that in addition to cleaning the machine he now, for the first time after January 2014, had to fill out the above forms certifying he had cleaned the machine.[34]

c. The analysis

General Counsel argues that Respondent failed to notify or bargain with Local 580 regarding their intention to implement changes to their food safety regulations or the effect that these changes would have on its bargaining unit employees.

On the other hand, Respondent contends that the Union has waived its right to bargain over changes in the food safety regulations by contract language or by inaction.

As noted above, Section 8(a)(5) of the Act requires an employer to provide its employees' representative with notice and an opportunity to bargain prior to making material, substantial, and significant changes with respect to terms and conditions of employment that are mandatory subjects of bargaining. *NLRB v. Katz,* 369 U.S. 736 (1962); *Toledo Blade Co.,* 343 NLRB 385, 387 (2004). The Board has found tobacco bans and food restrictions to be material and constitute a unilateral change in terms and conditions of employment, especially where those new work rules could be grounds for discipline. *W-I Forest Products Co.*, 304 NLRB 957, 959 (1991); *King Soopers, Inc.*, 340 NLRB 628 (2003); *Toledo Blade Co., Inc.*, 343 NLRB 385 (2004). Also employee job assignments are a mandatory subject of bargaining. *Flambeau Airmold Corp*., 334 NLRB 165, 171–172 (2001). The Board has found that an increase in job duties is a mandatory subject of bargaining. *Bundy Corp*., 292 NLRB 617, 678 (1989).

An employer may however, unilaterally implement changes to working conditions where the Union has waived its right to bargain over specific terms and conditions of employment. A waiver of the duty to bargain may result from action or inaction, through contractual language specifically waiving the right of a party to bargain about a particular subject. When a "management-rights" clause is the source of an asserted waiver, it is normally scrutinized by the Board to ascertain whether it affords specific justification for unilateral action. *Mt. Sinai*

[34] Tr. at p. 607, lines 12–14.

Hospital, 331 NLRB 895, 895 fn. 2 (2000); *Johnson-Bateman Co*., 295 NLRB 180, 184 (1989). It is well settled that the waiver of a statutory right will not be inferred from general contractual provisions; rather, such waivers must be clear and unmistakable. *New York Mirror*, 151 NLRB 834, 839–840 (1965).

Similarly, the failure to protest unilateral action may result in a waiver. *Ador Corp.,* 150 NLRB 1658 (1965); *U.S. Lingerie*, 170 NLRB 750 (1968). However, the Board and the Courts have construed the waiver doctrine narrowly and have been reluctant to infer waiver in the absence of clear and unmistakable conduct. *Metropolitan Edison Co., v. NLRB*, 460 U.S. 693, 708 (1983). Only where the collective=bargaining agreement provides a clear and unmistakable waiver of the union's right to bargain may an employer unilaterally implement rules. *Provena St. Joseph Medical Center*, 350 NLRB 808 (2007).

There is no dispute that Respondent failed to notify or bargain with Local 580 in February 2014 regarding their intention to implement changes to their food safety regulations or the effect that these changes would have on its bargaining unit employees. Respondent unilaterally implemented new job duties in requiring employees to fill out checklists ensuring that certain areas of its facility were clean. In addition, if those areas were not clean, the employee would be responsible for cleaning those areas. It is also unrebutted that, as of February 2014, Respondent required employees, such as employees who work in the rewinder area, to spend the last hour of their 4-day shift thoroughly cleaning each of the areas listed on the checklist, a job duty that was not previously required.

In addition, it is uncontested that Respondent's new restrictions on its employees' ability to use chewing tobacco or have food, drink, and other personal items on in the production area as well as the newly designated hygiene zones were implemented without first notifying or bargaining with the Union. Respondent's implementation of these new food safety rules materially affected its employees' terms and conditions of employment and constituted a mandatory subject of bargaining.

In support of its argument that Local 580 and Local 633 waived their right to bargain over new hygiene rules, Respondent cites Section 17 of the collective-bargaining agreement between Respondent and Local 580[35] that applies to the extruder department and the identical provisions in section 17 of its agreement with Local 633[36] dealing with the L3 department and the Langston Rewinder which provide that:

> A. Causes for discipline or discharge are as follows:
>
> ****
>
> 13. Refusal to comply with Company Rules
>
> a. Provided that such rules shall be posted in each department where they may be read by all employees and further, that no changes in present rules or no additional rules shall be made that are inconsistent with this Agreement: and

[35] GC Exh. 4, p. 21, sec. 17, erroneously cited in R. Brf. as GC Exh. 2, sec.16.
[36] GC Exh. 3, p. 21

> further provided, that any existing or new rules or changes in rules may be the subject of discussions between the Local Union Standing Committee and the Local Mill Manager, and in case of disagreement, the procedure for other grievances shall apply.

Respondent also cites section 17 B. 3[37] of the collective-bargaining agreements[38] which provide:

> Where a letter of reprimand, suspension or discharge is deemed justified, the final decision will be deferred until the appropriate Local Union representative has a reasonable opportunity to investigate the facts and then discuss the matter with the appropriate supervisor in the presence of the employee. . . .

Citing *Provena St. Joseph Hospital*, 350 NLRB 808, 810, 815 (2007), Respondent argues that taken together, the above contract provisions constitute a clear and unmistakable waiver of the Union's right to bargain about Respondent's work rules.

In *Provena* the employer argued that the union had relinquished its right to bargain over two subjects, incentive pay and a new attendance tardiness policy. The contract language in issue was a managements-rights provision that provided, inter alia:

> (1). . . [e]xcept as specifically limited by express provisions of this Agreement, [the Respondent] retains exclusively to itself the traditional rights (as historically existed prior to Association organization) to operate and manage its business and to direct its employees; (2) the clause permitting the Respondent "to change or eliminate existing methods, materials, equipment, facilities and reporting practices and procedures and/or to introduce new or improved ones; (3) the clause authorizing the Respondent "to suspend, discipline and discharge employees"; (4) the clause allowing the Respondent to "make and enforce the rules of conduct, standards, and regulations governing the conduct of employees"; (5) Respondent's right "to establish and administer policies and procedures related to research, education, training, operations, services and maintenance" of the Respondent's operations; and (6) the final section, reserving to the Respondent the right "to determine or change the methods and means by which its operations are to be carried on; to take any and all actions it determines appropriate, including the subcontracting of work, to maintain efficiency and appropriate patient care." Id. at 810.

The Board found that the employer did not violate the Act with respect to the newly implemented incentive pay program but that it did not violate the Act with regard to the new disciplinary policy on attendance and tardiness. The Board held that the:

> Application of our traditional standard reveals that several provisions of the management-rights clause, taken together, explicitly authorized the Respondent's unilateral action. Specifically, the clause provides that the Respondent has the right to "change reporting practices and procedures and/or to introduce new or

[37] Erroneously cited as sec.16.
[38] GC Exhs. 3 and 4 at p. 21.

improved ones," "to make and enforce rules of conduct," and "to suspend, discipline, and discharge employees." By agreeing to that combination of provisions, the Union relinquished its right to demand bargaining over the implementation of a policy prescribing attendance requirements and the consequences for failing to adhere to those requirements. Such a conclusion requires no resort to a "contract-coverage" analysis, for the contract itself plainly speaks to the right of the Respondent to act.

Contrary to the contract language in *Provena* and in both *Cincinnati Paperboard*, 339 NLRB 1079 (2003), and *Ingham Regional Medical Center*, 342 NLRB 1259 fn. 1 (2004), the language here does not clearly and unmistakably give Respondent the right to formulate new work rules. Here the language of section 17 in both contracts deals with discipline for not following extant rules not with Respondent's right to unilaterally implement new work rules. Indeed, the language of section 17 A. 13 specifically states that there shall be discussions between the Respondent and Locals 580 and 633 regarding any changes to extant rules. Section17 B. 3 has nothing to do with the Unions' waiver of bargaining over work rules.

As to Respondent's argument that the Unions waived their right to bargain over the hygiene rules by inaction, no waiver can occur where the union is presented with a fait accompli. The evidence reflects that Respondent implemented the changes to its food safety regulations in about February 2014 without notice to or bargaining with the Union. The Board has long held that a union cannot be held to have waived bargaining over a change that is presented as a fait accompli. *Intersystems Design & Technology Corp.,* 278 NLRB 759 (1986). Here, since the changes were made without notice to or bargaining with the Unions they were presented by Respondent with a fait accompli for which there can be no waiver.

Having found that Respondent unilaterally implemented new hygiene rules without notice to or bargaining with the Unions and that the Unions did not waive their rights to bargain over the implementation of these rules, I find that Respondent thereby violated Section 8(a)(5) of the Act.

3. The March 2014 changes to scheduling of training operators in the energy and utility department

Complaint paragraph 12(c) alleges that in March 2014 Respondent changed its practice of how it schedules its training operators in its E & U department. In its brief Respondent asserted that it no longer contests paragraph 12(c) regarding training scheduling.

a. The facts

There is no dispute that in a May 4, 2014, email Alsemaan told employees and management in the E & U department that "all new hires and transferred employees will work 8 hour days 5 days a week Monday through Friday 7AM-3PM."[39] Prior to this email, new E & U department trainees worked four 12-hour shifts each week. Therefore, after May 4, 2014 E & U trainees' hours were reduced from 48 hours to 40 hours per week.

[39] GC Exh. 45.

b. The analysis

It is uncontested that Respondent never notified or bargained with Local 580 before implementing this scheduling change. The Board has found the scheduling of employees to be a mandatory subject of bargaining. *Beverly Health & Rehabilitation Services, Inc.*, 335 NLRB 635, 636 (2001); *Raven Government Services*, 331 NLRB 651 (2000); *Bentler Industries, Inc.*, 323 NLRB 712, 715 (1997).

I find that by unilaterally changing the scheduling of trainees in its E & U department, Respondent violated Section 8(a)(5) of the Act.

4. The failure to provide information

a. The April 2, 2014 request

Complaint paragraphs 13(c) and (d) allege that since April 9, 2014, Respondent has failed to provide the Union with documentation and from April 9 to June 13, 2014, it has unreasonably delayed in providing the information related to any wage increases given to employees, disciplinary actions, probationary actions, reassignment of employees, and disciplinary recommendations that are related to these interviews and evaluations that are now being conducted by the management team.

i. The facts

On April 2, 2014, after hearing that Alsemaan was making changes to the E & U department employees' evaluation process, Local 580 President Silvery wrote a letter to Zolotko asking Respondent to meet and bargain about the changes and requesting documentation regarding the changes.[40] Silvery's letter requested the following information:

> [A]ll records, notes, emails, test results or other documentation related to any of the interviews and evaluations. Please make sure to also include documentation related to any wage increases given to employees, disciplinary actions, probationary actions, reassignment of employees and disciplinary recommendations that are related to these interviews and evaluations that are now being conducted by your management team by April 9, 2014, since the time you originally hired your new power plant manager.

On April 4, 2014, in response to Silvery's letter, Zolotko emailed[41] union area representative Anderson stating that she did not understand Silvery's letter. The same day Anderson responded[42] that it was quite clear that Silvery was asking Respondent to cease its unilateral changes to the qualification test in the E & U department and also provide Local 580

[40] GC Exh. 6.
[41] GC Exh. 7, p. 2.
[42] Ibid, p. 1.

with information related to those changes. On April 8, 2014, Zolotko emailed[43] Anderson stating that the bargaining issue in the E & U department should be addressed by the parties' grievance procedure.

On June 13, 2014, Zolotko provided the standing committee with a response to Silvery's April 2, 2014 information request.[44] Zolotko's response consisted of an assortment of unidentified documents attached to it. Zolotko attached no cover letter to her submission explaining either what she was responding to or why she had not attached all of the responsive documents. A review of the attachments reveals that they included some E & U evaluation records, notes taken during evaluation interviews, and emails regarding the recent evaluations. Absent from the response were any documents related to any wage increases given to employees, disciplinary actions, probationary actions, reassignment of employees, and disciplinary recommendations related to the evaluation interviews. There is no dispute that Zolotko never provided these documents to Local 580, never informed Local 580 that these documents did not exist, and never presented Local 580 with a reason for failing to provide these documents. Zolotko testified that the information requested does not exist.

As the record makes clear, the only responsive documents that were provided 2-1/2 months after Silvery's initial request were unduly delayed and Respondent provided no reason for the delay.

ii. The analysis

General Counsel takes the position that Respondent was obligated to produce the information Silvery requested or to provide the Local 580 with a timely explanation for its refusal to provide the requested information, citing *USPS*, 332 NLRB 635, 636 (2000). It did not do so.

Respondent argues that it had no duty to produce information that it does not have, citing *Harmon Auto Glass*, 352 NLRB 152 (2008), and *Whittier Area Parents Assn*., 296 NLRB 817 (1989). Respondent further contends that it did not engage in any unreasonable delay in furnishing requested information.

The Courts and Board since its inception have long held that an employer's duty to bargain includes, upon request, supplying the union with information necessary and relevant to fulfill its bargaining obligations. *NLRB v Acme Industrial Co.,* 385 U.S. 432, 435–436 (1967); *S.L. Allen & Co., Inc*., 1 NLRB 714, 728 (1936); *Industrial Welding Co.,* 175 NLRB 477 (1969). Information that implicates terms and conditions of employment of bargaining unit employees is presumptively relevant. *Whitesell Corp*., 355 NLRB No. 134 (2010); *CalMat Co.*, 331 NLRB 1084 (2000). Once it has been determined that the employer is under an obligation to produce the requested information, the employer is under an obligation to either produce the information or provide an explanation for its refusal to provide the requested information. An employer's failure to respond at all is likewise a violation of Section 8(a)(5) of the Act. *USPS*, 332 NLRB 635, 639 (2000).

[43] GC Exh. 8.
[44] GC Exh. 53.

Once the duty to provide information applies, an employer must produce the information in a timely manner. *West Penn Power Co., d/b/a Allegheny Power*, 339 NLRB 585, 587 (2003). While the Board looks to the totality of the circumstances in determining if the delay in furnishing information is unlawful, it has found a 7 week and 10 week delay unreasonable. *Woodland Clinic*, 331 NLRB 735, 737 (2001); *Bundy Corp.,* 292 NLRB 671, 672 (1989).

Here there is no dispute that the information Local 580 requested was presumptively relevant as it applied to terms and conditions of bargaining unit employees. Respondent did not furnish any of the information until June 13, 2014, over 10 weeks after it had been requested. Then much of the requested information, including documents related to wage increases, disciplinary actions, probationary actions, reassignment of employees, and disciplinary recommendations related to the evaluation interviews, was not provided. No explanation for either the delay in providing the information or the absence of the information was given until the hearing herein when Zolotko testified the information did not exist.

I find Respondent's citations to *Harmon Auto Glass*, 352 NLRB 152, 153 (2008), and *Whittier Area Parents Assn*., 296 NLRB 817 fn. 2 (1989), inapposite. In neither *Harmon* nor *Whittier* was there an issue as to whether the employer failed to explain its failure to produce non-existent information.

Respondent was under an obligation to either produce the requested information in a timely manner or to explain its inability to produce the information. It did neither. Moreover, I find that 10 weeks was an unreasonably long time to provide the information furnished, particularly considering the clarity of the request, the absence of evidence that it would be difficult to recover the information, and the absence of any explanation for Respondent's failure to act in a timelier manner. Accordingly, I find Respondent violated Section 8(a)(5) of the Act by failing to explain the absence of the requested information and by failing to provide the information furnished to the Union in a timely manner.

b. The April 24, 2014 request

Complaint paragraph 14(c) alleges that from about May 5 to about June 4, 2014, Respondent unreasonably delayed in furnishing the Union with information regarding Respondent's food safety training as set forth in Attachment A of the consolidated complaint.

i. The facts

On February 5, 2014, when Local 633 president Lovgren learned about the new hygiene rule changes, he sent superintendent of the paper machine area Tim Edwards (Edwards) an information request[45] about the new rules. In his letter Lovgren asked for the following information by February 18, 2014:

1. We need to know what the expected changes are,

[45] GC Exh. 20.

2. We need to know the locations of the Hygiene zones are,

3. We need to know what locations of the Production zones are,

4. We need to know what are the changes to existing job duties and whose jobs will those effect,

5. Please include any check off sheets, or check off lists that will effect [sic]those jobs,

6. We need to know if there will be any special clothing requirements, i.e. clean clothes, uniforms?

Zolotko emailed[46] Lovgren back that day stating: "Did you attend the recent food safety ISO training? I believe the answers to your questions are there." After receiving Zolotko's response and hearing from Edwards that manager Mike Haas (Haas) was the appropriate person to whom to direct his request, Lovgren forwarded this same request to Haas on February 10, 2014.[47]

On April 7, 2014, after receiving no response from Haas, Lovgren sent an email to Zolotko requesting the information once again. On April 8, Zolotko emailed Lovgren the training materials for the new food safety rules.[48] After reviewing the training materials, Lovgren created a list of questions about the hygiene rule changes and sent it to Zolotko on April 24, 2014.[49] In the April 24, 2014 information request, the Union made a list of 10 subjects regarding the new hygiene rules about which they had several questions in each subject. On June 4, 2014, Zolotko responded to Lovgren's inquiry.[50]

ii. The analysis

General Counsel takes the position that Respondent failed to provide the information requested on April 24, 2014, in a timely manner. Respondent contends the information was provided in a timely manner under all of the circumstances.

As already noted, an employer has the duty under Section 8(a)(5) of the Act to provide the union with relevant information in a timely manner. *Shaw's Supermarkets, Inc.*, 332 NLRB 635 (2000); *Woodland Clinic*, 331 NLRB 735 (2001).

The information sought here was presumptively relevant as it deals with terms and conditions of employment. Lovgren requested specific information regarding the new food safety rules on April 24, 3014. Zolotko failed to provide Lovgren with any response until June 4, 2014, 6 weeks later.

[46] GC Exh. 21.
[47] GC Exh. 22.
[48] GC Exh. 23
[49] GC Exh. 24.
[50] GC Exh. 25.

A determination of the reasonableness of a delay in supplying relevant information requires a review of all the relevant circumstances, including "the complexity and extent of the information sought, its availability and the difficulty in retrieving the information." *Allegheny Power,* supra at 587. The Board has held the absent of evidence justifying an employer's delay in furnishing a union with relevant information, may justify finding a violation of Section 8(a)(5) of the Act. *Pennco, Inc.,* 212 NLRB 677, 678 (1974).

Here, the information sought was not complex but straightforward. Respondent presented no evidence that the information was unavailable or difficult to retrieve. Under these circumstances I find that a delay of 6 weeks in furnishing the requested information was unreasonable and therefore violated Section 8(a)(5) of the Act.

c. The April 30, 2014 request

Complaint paragraph 15(c) alleges that since about May 2, 2014, Respondent has failed to provide the Union with the exact cost and your justification for each of the costs in the bill and invoice you sent to Local 580 and 633 for bargaining related expenses; and explain in detail how you calculated the amounts that are contained in the invoices you sent to Locals 580 and 633.

i. The facts

At the beginning of bargaining, the parties agreed that Respondent would pay the bargaining unit employees for their time spent in bargaining sessions and the Locals would reimburse Respondent for that time. This agreement was not reduced to writing.

On April 8, 2014, after parties had met for some time in bargaining for the successor contracts, Local 633's president, Lovgren wrote an email[51] to Respondent's payroll specialist, Sandra Swogger (Swogger), requesting that she send Local 633 an invoice for the hours that Respondent had paid for the bargaining committee members' bargaining time. Swogger sent Lovgren an invoice[52] which provided lump-sum amounts due on behalf of each member of the bargaining committee. When Lovgren received this information he sent another email[53] asking if something had been added. Swogger replied[54] that she used "a fully loaded rate." Finally on April 11, 2014, Lovgren emailed[55] Swogger and Zolotko and asked to see a break down on the uploaded rate and what it covered.

Zolotko sent Lovgren an email[56] reply stating that ". . . we are not creating special documents to satisfy your curiosity. We are paying the same way we paid for the Extruders." According to Lovgren, he needed this itemized information in order to understand how Respondent was billing the Union for the bargaining committee members' time and for the Local's financial records for tax purposes.

[51] GC Exh. 9, p. 4.
[52] GC Exh. 10.
[53] GC Exh. 9, p. 3.
[54] Ibid. at p. 2.
[55] Ibid. at p. 1.
[56] Ibid. at p. 1.

On April 15, 2014, Lovgren emailed[57] Zolotko again and asked her for a breakdown of Respondent's fully loaded rate. Receiving no response, Lovgren emailed[58] Zolotko again on April 24, 2014. On April 30, 2014, after still having received no response from Zolotko, Union AWPPW representative Anderson sent yet another letter[59] to Zolotko requesting, in pertinent part:

> . . . a written description of how the company calculated the hourly rates that you have included in the 2 invoices you sent to Locals 580 and 633.
>
> a. Please identify the exact cost of your justification for each of the costs in the bill and invoice you sent to our unions 580 and 633 for bargaining related expenses.
> b. Please explain in detail how you calculated the amounts that are contained in the invoices you sent to Locals 580 and 633.

On May 19, 2014, Zolotko emailed[60] Lovgren payroll records for the employees who were on the bargaining committees for the specified time periods. That day, Zolotko sent an email[61] to Lovgren stating: "I just sent you the bargain board payroll data. It seems redundant, since you all were at the bargain and you all have access to your payroll records . . . so, collectively you've had this data all along."

The records Zolotko sent failed to reflect what the Locals were requesting, however, as there was no indication as to which benefits Respondent had added in calculating their "fully loaded" rate and/or how those benefits were calculated.

On June 5, 2014, Anderson emailed[62] Zolotko expressing that the Locals still had not received the information requested stating:

> It is my understanding that on the original bill the Union received, the Company was charging an amount that was greater than the hourly rates of the bargaining board members. When the Union asked the Company why this was, they were told that they were "uploaded rates." The Union has asked for an itemized bill breaking down just what these uploaded rates were comprised of. Diana has refused to give the Union this information, only stating that this was how the Company charged the Union during Extruder bargaining.

Zolotko responded[63] that she had sent employee paystubs to Lovgren.

[57] GC Exh. 11.
[58] GC Exh. 12.
[59] GC Exh. 14.
[60] GC Exh. 15.
[61] GC Exh. 16.
[62] GC Exh. 17.
[63] Ibid.

On August 15, and 18, 2014, Lovgren again emailed[64] Zolotko explaining that the payroll records did not break down the amount taken into consideration by Respondent in coming up with its lump-sum amounts and he renewed his request for the information yet again.

On September 18, 2014, Respondent finally provided the breakdown of what was included in the "fully loaded" rate.[65]

ii. The analysis

General Counsel argues that Respondent unreasonably delayed in furnishing relevant information to the Union. Respondent contends that the issue is moot since Respondent ultimately furnished the requested information.

An employer is under an obligation to furnish a union with relevant information necessary for the performance of the union's duties in representing the unit employees and for administration of a collective-bargaining agreement. *NLRB v. Acme Indus. Co.*, 385 U.S. 432 (1967); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956); *Safeway Stores*, 252 NLRB 1323 (1980); *Westinghouse Electric Corp.*, 239 NLRB 106, 107 (1978). The standard for determining the relevance of information sought by a bargaining agent in conjunction with administration of a collective-bargaining agreement was set forth in *Westinghouse*:

> It is well established that a labor organization, obligated to represent employees in a bargaining unit with respect to their terms and conditions of employment, is entitled to such information from the employer as may be relevant and reasonably necessary to the proper execution of that obligation. The right to such information exists not only for the purpose of negotiating a contract, but also for the purpose of administering a collective-bargaining agreement. The employer's obligation, in either instance, is predicated upon the need of the union for such information in order to provide intelligent representation of the employees. The test of the union's need for such information is simply a showing of "probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." The union need not demonstrate that the information sought is certainly relevant or clearly dispositive of the basic negotiating or arbitration issues between the parties. The fact that the information is of probable or potential relevance is sufficient to give rise to an obligation on the part of an employer to provide it. The appropriate standard in determining the potential relevance of information sought in aid of the bargaining agent's responsibility is a liberal discovery-type standard. Id at 107

Here Local 633 sought an explanation of the invoice Respondent had provided for Local 633 to reimburse Respondent for bargaining unit members pay during bargaining time. While Respondent does not contest the relevancy of this information, I find the information sought here was relevant not only to the Union's administration of its oral agreement with Respondent for reimbursement of its members' bargaining pay but also for its ability to negotiate the parties' successor collective-bargaining agreement. The oral agreement was established to facilitate the Local 633 bargaining committee members' pay during bargaining sessions and thus was of

[64] GC Exh. 18.
[65] GC Exh. 19.

benefit to Local 633 in engaging in bargaining for a successor contract with Respondent. Local 633 requested information to ensure the appropriate amount of money for bargaining committee members had been included in Respondent's invoice for the Union's reimbursement, per the parties' agreement. While Zolotko claimed in her email that the information could be ascertained from the bargaining committee members' paystubs, the exact breakdown of the lump-sum amounts set forth in Respondent's invoice, including which employee benefits were included, could not be established from general paystub information provided.

Thus, Respondent failed to provide the Locals with the breakdown of those numbers until after the complaint issued herein 20 weeks after the information was requested. No explanation was offered as to why Respondent failed to produce the requested information for 20 weeks. Respondent's sole defense is that it ultimately gave the information to the Union. Under these circumstances I find that Respondent's failure to provide the requested information until September 18, 2014, was an unreasonable delay and violated its duty to provide the Locals with information in violation of Section 8(a)(5) of the Act.

d. The May 1, 2014 request

Complaint paragraph 16(a) alleges that since about May 1, 2014, the Union has requested the following information of Respondent: (i) The questions asked at the fact finding; (ii) The answers as recorded by Dave Kay and Bob Montgomery at the fact finding; (iii) The reasons for these questions; (iv) Emails about this incident; (v) A list of all complaints against Rick Olsen; and (vi) Who complained—what was said and personal notes/conversations about the incident.

Complaint paragraph 16(c) alleges that since about May 8, 2014, Respondent has failed and refused to furnish the Union with (iii) The reasons for these questions; (iv) Emails about this incident; (v) A list of all complaints against Rick Olsen.

Complaint paragraph 16(d) alleges that from May 8, 2014, to about June 5, 2014, Respondent unreasonably delayed in furnishing the Union with (i)The questions asked at the fact finding; (ii) The answers as recorded by Dave Kay and Bob Montgomery at the fact finding; (vi) Who complained—what was said and Personal notes/conversations about the incident.

i. The facts

On April 28, 2014, Local 580 Shop Steward Mike Mirenta (Mirenta) participated in a fact finding meeting, representing E & I Tech Rick Olson (Olson). Central services Superintendent Kay and TDM Bob Montgomery (Montgomery) were also present during the meeting. During the meeting, Kay asked Olson a series of questions about a call that he received while he was on duty in the power house. At the end of the meeting, Mirenta asked Kay who had made the complaint about employee Olson. Kay replied that Mirenta would have to ask the human resources department for that information. Mirenta also asked for a copy of the questions that Kay had asked Olson during the fact finding as well as any notes of Olson's responses made during the interview. Again Kay said that Mirenta would have to go through human resources to get that information.

After the meeting Mirenta went to the human resources office to follow up on his information requests. Mirenta asked Zolotko if he needed to fill out a specific form in order to make an information request. Zolotko told Mirenta that if he wanted the form, he could get one from Local 580. When Mirenta asked Zolotko if he could send her an email asking for the information, Zolotko replied that she did not think an email would work.

Later Mirenta spoke with Local 580 President Silvery, who told Mirenta that email was an appropriate way to make an information request. On May 1, 2014, Mirenta emailed[66] Zolotko an information request for the following information regarding the Olson fact finding:

> The questions asked at the fact finding; The answers as recorded by Dave Kay & Bob Montgomery at the fact finding; The reasons for these questions; E-mails about this incident; List all the complaints against Rick Olson; Who complained; What was said Personal notes/conversations about the incident

On June 5, 2014, Zolotko responded[67] to Mirenta's information request. Zolotko attached two sets of fact finding notes for Olson and James Pruitt to an email sent to the Local 580 Standing Committee with a copy to Mirenta.[68] Zolotko failed to provide the reasons behind the questions asked in Olson's fact finding, emails about the incident, or complaints against Olson. It is undisputed that Zolotko never provided the requested items, never told Local 580 that the information requested did not exist, and never explained why she was not providing Local 580 with the requested information.

In its brief Respondent contends that the investigation into Olson's conduct had not been completed at the time of Mirenta's request and on June 5, 2014, when the investigation was completed, it responded to the information request and provided all available documents.

ii. The analysis

General Counsel takes the position that Respondent unreasonably delayed in furnishing and refused to furnish requested information. Respondent argues the investigation was not completed until June 5, 2014, and that it provided all available documents.

The Union requested information concerning a fact finding regarding a bargaining unit member that could lead to discipline and ultimately a grievance. The information requested was therefore presumptively relevant. *Island Creek Coal Co.*, 292 NLRB 480, 487 (1989). Zolotko provided some of the requested materials, two sets of fact finding notes, 5 weeks after the initial request on June 5, 2014. There is no evidence that the fact finding notes were difficult to obtain. In its June 5, 2014 partial production[69] of information, Respondent asserted that "Our investigation is now complete." In its brief Respondent asserts that, when the investigation was completed, it responded to the information request and provided all available documents. However, the record is devoid of any evidence as to when Respondent completed its

[66] GC Exh. 50.
[67] GC Exh. 51.
[68] GC Exh. 52.
[69] Ibid.

investigation or that this in some way absolved it of its duty to furnish the requested information before June 5. Further there is no record evidence that there was no other information responsive to the May 1 information request or that Respondent ever so notified the Union.

Under all of the circumstances, including the clarity and lack of complexity of the request, the relative ease of recovering the information and the absence of a rationale for the delay in providing the requested information, I conclude that Respondent unreasonably delayed in providing the information for over 5 weeks and thereby violated section 8(a)(5) of the Act. *Shaw's Supermarkets, Inc*., 339 NLRB 871 (2003); *USPS*, 332 NLRB 635, 638 (2000); *Overnight Transportation Co.*, 330 NLRB No. 1275 (2000).

Further, Respondent's failure to provide all of the information in the May 1 information request violates Section 8(a)(5) of the Act. Respondent's bare assertion in its brief that it provided all available documents is insufficient explanation for its failure to provide the requested documents. By failing to provide all of the requested documents and by failing to inform the Union in a timely manner that it had no further documents, Respondent violated Section 8(a)(5) of the Act. *USPS*, 332 NLRB 635, 639 (2000).

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The evidence having established that the Respondent suspended its employee Steve Collins, my recommended order requires the Respondent to make him whole without loss of seniority and other privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. My recommended order further requires that backpay shall be computed in accordance with *F.W. Woolworth Co*., 90 NLRB 289 (1950), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), plus daily compound interest as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

The recommended Order also requires that the Respondent shall expunge from its files and records any and all references to the unlawful suspension and to notify Collins in writing that this has been done and that the unlawful discrimination will not be used against him in any way. *Sterling Sugars, Inc*., 261 NLRB 472 (1982). Further, the Respondent must not make any reference to the expunged material in response to any inquiry from any employer, employment agency, unemployment insurance office, or reference seeker, or use the expunged material against them in any other way.

The Respondent shall be required to post a notice that assures its employees that it will respect their rights under the Act. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. *J. Picini Flooring*, 356 NLRB No. 8 (2010).

The Board has held that discriminatees be reimbursed for any excess taxes owed as a result of a lump-sum backpay award and that Respondent be ordered to complete the appropriate paperwork as set forth in IRS Publication 975 to notify the Social Security Administration what periods to which the backpay should be allocated as requested in the remedy section of the complaint herein.

In *Don Chavas LLC d/b/a Tortillas Dan Chavas*, 361 NLRB No. 10 (2014), Board ordered that it will routinely require the filing of a report with the Social Security Administration allocating backpay awards to the appropriate calendar quarters. The Board also held that it will routinely require respondents to compensate employees for the adverse tax consequences of receiving one or more lump-sum backpay awards covering periods longer than 1 year. The Board concluded that it is the General Counsel's burden to prove and quantify the extent of any adverse tax consequences resulting from the lump-sum backpay award and that such matters shall be resolved in compliance proceedings.

Pursuant to *Tortillas Dan Chavas* supra, I will order that Respondent shall file a report with the Social Security Administration allocating any backpay awards to the appropriate calendar quarters.

CONCLUSIONS OF LAW

1. Respondent Weyerhaeuser Company is an employer engaged in commerce and in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Association of Western Pulp and Paper Workers, affiliated with the United Brotherhood of Carpenters and Joiners of America (AWPPA) and its Locals 580 and 633 (Unions) are labor organizations within the meaning of Section 2(5) of the Act and are the exclusive collective bargaining representative of Respondent's employees in the following appropriate collective bargaining units:

Local 633 represents a unit of Respondent's 75 extruders (extruder unit) including:

> All employees of Respondent at its Longview, Washington extruder operation, except those employees engaged in administration, actual supervision, watchman duties, sales, engineering and drafting, research and technical occupations requiring professional training, accounting, office clerical and guards, supervisors, and professional employees as defined in the Act.

Local 633 also represents a unit of Respondent's 125 paperboard employees (paperboard unit) including:

> All employees of Respondent working in its paperboard, shipping, L 3 paper machine, and L 3 technical departments at its Longview facility, except those engaged in administration, actual supervision, watchman duties, sales, engineering and drafting, research and technical occupations requiring professional training, accounting, clerical, stenographic and other clerical work. Also excluded are guards, supervisors, and professional employees as defined in the Act.

Local 580 represents a unit of Respondent's 250 energy and utility, maintenance, fiberline, and chip processing employees (Local 580 unit) including:

> All employees of Respondent at its Longview facility, except those employees in Respondents extruder, paperboard, shipping, L 3 paper machine, L 3 technical departments, and those employees engaged in administration, actual supervision, watchman duties, sales, engineering and drafting, research and technical occupations requiring professional training, accounting, stenographic and other clerical work. Also excluded are guards, supervisors, and professional employees as defined in the Act.

3. By engaging in the following conduct, the Respondent committed unfair labor practices in violation of Section 8(a)(5) and (1) of the Act:

(a) Refusing to recognize and bargain in good faith with Association of Western Pulp and Paper Workers, affiliated with the United Brotherhood of Carpenters and Joiners of America (AWPPA) and its Locals 580 and 633 (Unions),the exclusive collective-bargaining representative of its employees in the following collective-bargaining units:

The Local 633 unit of Respondent's 75 extruders (extruder unit) including:

> All employees of Respondent at its Longview, Washington extruder operation, except those employees engaged in administration, actual supervision, watchman duties, sales, engineering and drafting, research and technical occupations requiring professional training, accounting, office clerical and guards, supervisors, and professional employees as defined in the Act.

The Local 633 unit of Respondent's 125 paperboard employees (paperboard unit) including:

> All employees of Respondent working in its paperboard, shipping, L 3 paper machine, and L 3 technical departments at its Longview facility, except those engaged in administration, actual supervision, watchman duties, sales, engineering and drafting, research and technical occupations requiring professional training, accounting, clerical, stenographic and other clerical work. Also excluded are guards, supervisors, and professional employees as defined in the Act.

The Local 580 unit of Respondent's 250 energy and utility, maintenance, fiberline and chip processing employees (Local 580 unit) including:

> All employees of Respondent at its Longview facility, except those employees in Respondents extruder, paperboard, shipping, L 3 paper machine, L 3 technical departments, and those employees engaged in administration, actual supervision, watchman duties, sales, engineering and

drafting, research and technical occupations requiring professional training, accounting, stenographic and other clerical work. Also excluded are guards, supervisors, and professional employees as defined in the Act.

(b) Unilaterally implementing food safety rules without notice to or bargaining with the Unions.

(c) Unilaterally implementing new evaluation processes for the E & U department employees without notice to or bargaining with the Unions.

(d) Unilaterally changing the hours of E & U department employees without notice to or bargaining with the Unions.

(e) Refusing to provide and unreasonably delaying in providing the Unions with information relevant and necessary to its function as collective-bargaining representative of bargaining unit employees.

4. By engaging in the following conduct, the Respondent committed unfair labor practices in violation of Section 8(a)(1) of the Act.

(a) Suspending Steve Collins because he exercise his right to bring issues and complaints to Respondent on behalf of himself and other employees.

(b) Denying Steve Collins and Joyce Becker their right to effective union representation in an interview that could reasonably lead to discipline by telling the representative to remain silent.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[70]

ORDER

Respondent, Weyerhaeuser Company, located in Federal Way, Washington, and with a facility located in Longview, Washington, its officers, agents, successors, and assigns shall:

1. Cease and desist from

(a) Refusing to recognize and bargain in good faith with Association of Western Pulp and Paper Workers, affiliated with the United Brotherhood of Carpenters and Joiners of America (AWPPA) and its Locals 580 and 633 (Unions),the exclusive collective-bargaining representative of its employees in the following collective bargaining units:

The Local 633 unit of Respondent's 75 extruders (extruder unit) including:

[70] If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections shall be waived for all purposes.

All employees of Respondent at its Longview, Washington extruder operation, except those employees engaged in administration, actual supervision, watchman duties, sales, engineering and drafting, research and technical occupations requiring professional training, accounting, office clerical and guards, supervisors, and professional employees as defined in the Act.

The Local 633 unit of Respondent's 125 paperboard employees (paperboard unit) including:

All employees of Respondent working in its paperboard, shipping, L 3 paper machine, and L 3 technical departments at its Longview facility, except those engaged in administration, actual supervision, watchman duties, sales, engineering and drafting, research and technical occupations requiring professional training, accounting, clerical, stenographic and other clerical work. Also excluded are guards, supervisors, and professional employees as defined in the Act.

The Local 580 unit of Respondent's 250 energy and utility, maintenance, fiberline and chip processing employees (Local 580 unit) including:

All employees of Respondent at its Longview facility, except those employees in Respondents extruder, paperboard, shipping, L 3 paper machine, L 3 technical departments, and those employees engaged in administration, actual supervision, watchman duties, sales, engineering and drafting, research and technical occupations requiring professional training, accounting, stenographic and other clerical work. Also excluded are guards, supervisors, and professional employees as defined in the Act.

(b) Unilaterally implementing food safety rules without notice to or bargaining with the Unions.

(c) Unilaterally implementing new evaluation processes for the E & U department employees without notice to or bargaining with the Unions.

(d) Unilaterally changing the hours of E & U department employees without notice to or bargaining with the Unions.

(e) Refusing to provide and unreasonably delaying in providing the Unions with information relevant and necessary to its function as collective-bargaining representative of bargaining unit employees.

(f) Suspending you because you exercise your right to bring issues and complaints to us on behalf of yourself and other employees.

(g) Denying your right to effective union representation in an interview that could reasonably lead to discipline by telling the representative to remain silent.

(h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) The Respondent shall be required to post a notice that assures its employees that it will respect their rights under the Act. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. *J. Picini Flooring,* 356 NLRB No. 8 (2010).

(b) Provide AWPPW Locals 580 and 633 with the information they requested on April 2, 24, and April 30, 2014.

(c) Make Steve Collins whole for any loss of earnings and other benefits suffered as a result of his suspension, less any net interim earnings, plus interest.

(d) Remove from our files all references to the discipline of Steve Collins and notify him in writing that this has been done and that the suspension will not be used against him in any way.

(e) Provide the AWPPW Locals 580 and 633 with the information they requested on April 2, 24, and 30, 2014, and May 1, 2014.

(f) Upon the request of AWPPW Local 580, rescind any or all changes to your terms and conditions of employment that we made without first bargaining with the Union, including changes made to the way we conduct training evaluations (also known as "qualification reviews") and changes to our trainees' work schedules.

(g) Upon request of AWPPW Local 580 and/or AWPPW Local 633, rescind any or all changes to your terms and conditions of employment that we made without first bargaining with the Union, including the new food safety rules implemented in January and February 2014 at our Longview facility.

(h) Restore our training evaluation/qualification review system for our Energy and Utility employees to as it was prior to October 2013.

(i) Arrange for any Energy and Utility employees who are currently in the process of going through such evaluations/qualification reviews to be interviewed, evaluated, and promoted under our evaluation process in place prior to October 2013.

(j) Pay employees for the wages and other benefits lost because of the changes to terms and conditions of employment that we made without bargaining with AWPPW Local 580 and/or AWPPW 633.

(k) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records

and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(l) Within 14 days after service by the Region, post at facilities in Longview, Washington copies of the attached notice marked "Appendix."[71] Copies of the notice, on forms provided by the Regional Director for Region 19 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 10, 2013.

(m) Within 21 days after service by the Region, filed with the Regional Director for Region 19 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated, Washington, D.C. March 25, 2015

John J. McCarrick
Administrative Law Judge

71 If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

After a trial at which we appeared, argued, and presented evidence, the National Labor Relations Board has found that we violated the National Labor Relations Act and has directed us to post this notice to employees and to abide by its terms.

Accordingly, we give our employees the following assurances:

WE WILL NOT refuse to recognize and bargain with the Association of Western Pulp and Paper Workers Union, affiliated with the United Brotherhood of Carpenters and Joiners of America, Local 580 ("AWPPW Local 580"), as the exclusive representative of our employees in the following appropriate unit ("580 Unit"):

All our employees working in our Longview facility, except those employees in our extruder, paperboard, shipping, L 3 paper machine, and L 3 technical departments, and those employees engaged in administration, actual supervision, watchman duties, sales, engineering and drafting, research and technical occupations requiring professional training, accounting, clerical, stenographic and other office work. Also excluded are guards, supervisors, and professional employees as defined in the Act.

WE WILL NOT refuse to recognize and bargain with the Association of Western Pulp and Paper Workers Union, affiliated with the United Brotherhood of Carpenters and Joiners of America, Local 633 (the "AWPPW Local 633"), as the exclusive representative of our employees in the following appropriate unit ("Paperboard Unit"):

All our employees working in its paperboard, shipping, L 3 paper machine, and L 3 technical departments at our Longview facility, except those engaged in administration, actual supervision, watchman duties, sales, engineering and drafting, research and technical occupations requiring professional training, accounting, clerical, stenographic, and other clerical work.
Also excluded are guards, supervisors, and professional employees as defined in the Act.

WE WILL NOT refuse to recognize and bargain with the AWPPW Local 633, as the exclusive representative of our employees in the following appropriate unit ("Extruder Unit"):

All our employees at our Longview, Washington extruder operation, except those employees engaged in administration, actual supervision, watchman duties, sales, engineering and drafting, research and technical occupations requiring professional training, accounting, office clerical and guards, supervisors, and professional employees as defined in the Act.

YOU HAVE THE RIGHT to freely bring issues and complaints to us on behalf of yourself and other employees and **WE WILL NOT** do anything to interfere with your exercise of that right.

WE WILL NOT suspend you because you exercise your right to bring issues and complaints to us on behalf of yourself and other employees.

WE WILL NOT deny employees effective union representation at fact finding interviews that could reasonably lead to discipline by telling the representatives to be silent.

WE WILL NOT unreasonably delay in providing AWPPW Locals 580 and 633 with information that is relevant and necessary to its role as your bargaining representative.

WE WILL NOT refuse to provide AWPPW Locals 580 and 633 with information that is relevant and necessary to its role as your bargaining representative.

WE WILL NOT refuse to meet and discuss in good faith with AWPPW Locals 580 and 633 any proposed changes in your wages, hours and working conditions before putting such changes into effect.

WE WILL NOT remove union fliers from facility bulletin boards designated for use by AWPPW Locals 580 and 633.

WE WILL provide AWPPW Locals 580 and 633 with the information they requested on April 2, 24, and 30, 2014.

WE WILL pay Steve Collins for the wages and other benefits he lost because we disciplined him.

WE WILL remove from our files all references to the discipline of Steve Collins and **WE WILL** notify him in writing that this has been done and that the suspension will not be used against him in any way.

WE HAVE provided the AWPPW Locals 580 and 633 with the information they requested on April 24 and 30, 2014.

WE WILL provide the AWPPW Locals 580 and 633 with all of the information they requested on April 2, 2014, and May 1, 2014.

WE WILL, if requested by AWPPW Local 580, rescind any or all changes to your terms and conditions of employment that we made without first bargaining with the Union, including changes made to the way we conduct training evaluations (also known as "qualification reviews") and changes to our trainees' work schedules.

WE WILL, if requested by AWPPW Local 580 and/or AWPPW Local 633, rescind any or all changes to your terms and conditions of employment that we made without first bargaining with the Union, including the new food safety rules implemented in January and February 2014 at our Longview facility.

WE WILL restore our training evaluation/qualification review system for our Energy and Utility employees to as it was prior to October 2013.

WE WILL, arrange for any Energy and Utility employees who are currently in the process of going through such evaluations/qualification reviews to be interviewed, evaluated, and promoted under our evaluation process in place prior to October 2013.

WE WILL pay employees for the wages and other benefits lost because of the changes to terms and conditions of employment that we made without bargaining with AWPPW Local 580 and/or AWPPW 633.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WEYERHAEUSER CORPORATION

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

915 2nd Avenue, Room 2948, Seattle, WA 98174-1078
(206) 220-6300, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/19-CA-122853 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (206) 220-6284.